

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

METAL RESOURCES, INC.,)
Plaintiff,)
vs.) Case Number: 2008 C 1068
METALMAX, LLC.,) Judge Robert W. Gettleman
Defendants.)
)

**PLAINTIFF/COUNTERDEFENDANT METAL RESOURCES, INC. ANSWER TO
AFFIRMATIVE DEFENSES AND COUNTERCLAIM**

NOW COMES Plaintiff/Counterdefendant, METAL RESOURCES, INC., by and through its attorneys, PLUYMERT, PIERCEY, MACDONALD & AMATO, LTD., and for its Answer to Affirmative Defenses, states as follows:

AFFIRMATIVE DEFENSES

1. Plaintiff's claims are barred, in whole or in part, by Metalmax's right of set-off.

**ANSWER: Plaintiff denies the allegations contained in Paragraph 1 of
Defendant's Affirmative Defenses.**

2. Plaintiff's claims are barred, in whole or in part, by want of consideration.

**ANSWER: Plaintiff denies the allegations contained in Paragraph 2 of
Defendant's Affirmative Defenses.**

3. Plaintiff's claims are barred, in whole or in part, by Plaintiff's own breach of contract.

**ANSWER: Plaintiff denies the allegations contained in Paragraph 3 of
Defendant's Affirmative Defenses.**

4. Plaintiff's claims are barred, in whole or in part, by acceptance of contract terms.

ANSWER: Plaintiff denies the allegations contained in Paragraph 4 of Defendant's Affirmative Defenses.

5. Plaintiff's claims are barred, in whole or in part, by Metalmax's timely rejection of nonconforming and/or defective goods.

ANSWER: Plaintiff denies the allegations contained in Paragraph 5 of Defendant's Affirmative Defenses.

6. Plaintiff's claims are barred, in while or in part, by novation.

ANSWER: Plaintiff denies the allegations contained in Paragraph 6 of Defendant's Affirmative Defenses.

7. Plaintiff's claims are barred, in whole or in part, by laches.

ANSWER: Plaintiff denies the allegations contained in Paragraph 7 of Defendant's Affirmative Defenses.

8. Plaintiff's claims are barred, in whole or in part, by acceptance and ratification.

ANSWER: Plaintiff denies the allegations contained in Paragraph 8 of Defendant's Affirmative Defenses.

9. Plaintiff's claims are barred, in whole or in part, by accord and satisfaction.

ANSWER: Plaintiff denies the allegations contained in Paragraph 9 of Defendant's Affirmative Defenses.

WHEREFORE, Plaintiff/Counterdefendant, METAL RESOURCES, INC., by and through its attorneys, PLUYMERT, PIERCEY, MACDONALD & AMATO, LTD., respectfully requests that Defendant's Affirmative Defenses be dismissed and for such other and further relief as may be deemed equitable and just herein.

COUNTERCLAIM

NOW COMES Plaintiff/Counterdefendant, METAL RESOURCES, INC., by and through its attorneys, PLUYMERT, PIERCEY, MACDONALD & AMATO, LTD., and for its Answer to Counterclaim, states as follows:

COUNT I
(BREACH OF CONTRACT)

1. Metalmax is a Colorado limited liability company engaged in buying and selling steel and metal products and metal processing. It is headquartered in Golden, Colorado.

ANSWER: Plaintiff/Counterdefendant admits the allegations contained in Paragraph 1 of Defendant's Counterclaim.

2. MRI is an Illinois corporation engaged in the business of selling and buying steel and metal product. It also manufactures roll-form steel studs. It is headquartered in Hinsdale, Illinois.

ANSWER: Plaintiff/Counterdefendant admits the allegations contained in Paragraph 2 of Defendant's Counterclaim.

3. In October and November 2005, MRI asked Metalmax to supply steel and metal product to MRI.

ANSWER: Plaintiff/Counterdefendant admits the allegations contained in Paragraph 3 of Defendant's Counterclaim.

4. Metalmax shipped to MRI the steel and metal product requested by MRI and MRI accepted the good [sic].

ANSWER: Plaintiff/Counterdefendant admits the allegations contained in Paragraph 4 of Defendant's Counterclaim.

5. Metalmax sent invoices to MRI for the goods shipped. A copy of the invoices is attached **Exhibit A**.

ANSWER: Plaintiff/Counterdefendant admits that Metalmax sent invoices to MRI for the goods shipped but denies the remaining allegations contained in Paragraph 5, in that no Exhibits were attached to the Counterclaim.

6. MRI has filed to pay for the steel and metal product it received from Metalmax.

ANSWER: Plaintiff/Counterdefendant denies the allegations contained in Paragraph 6 of Defendant's Counterclaim.

7. MRI is indebted to Metalmax in the sum of \$25,974.60 for steel and metal product ordered, delivered and accepted by or on behalf of the [sic] MRI.

ANSWER: Plaintiff/Counterdefendant denies the allegations contained in Paragraph 7 of Defendant's Counterclaim.

WHEREFORE, Plaintiff/Counterdefendant, METAL RESOURCES, INC., by and through its attorneys, PLUYMERT, PIERCEY, MACDONALD & AMATO, LTD., respectfully requests that Defendant's Counterclaim, Count I, be dismissed and for such other and further relief as may be deemed equitable and just herein.

COUNT II
(QUANTUM MERUIT)

8. Metalmax repeats and incorporates the foregoing paragraphs.

ANSWER: Plaintiff/Counterdefendant realleges and reasserts its answers to the foregoing paragraphs.

9. Metalmax delivered goods to MRI.

ANSWER: Plaintiff/Counterdefendant admits the allegations contained in Paragraph 4 of Defendant's Counterclaim.

10. Metalmax had a reasonable expectation that it would be paid the reasonable value of the goods supplied to MRI.

ANSWER: Plaintiff/Counterdefendant denies the allegations contained in Paragraph 4 of Defendant's Counterclaim.

11. MRI requested and accepted the goods under circumstances in which it knew or reasonably should have known that Metalmax expected to be paid.

ANSWER: Plaintiff/Counterdefendant denies the allegations contained in Paragraph 4 of Defendant's Counterclaim.

12. MRI has failed to pay the reasonable value of the good supplied by MRI.

ANSWER: Plaintiff/Counterdefendant denies the allegations contained in Paragraph 4 of Defendant's Counterclaim.

WHEREFORE, Plaintiff/Counterdefendant, METAL RESOURCES, INC., by and through its attorneys, PLUYMERT, PIERCEY, MACDONALD & AMATO, LTD., respectfully requests that Defendant's Counterclaim, Count II, be dismissed and for such other and further relief as may be deemed equitable and just herein.

Respectfully submitted:
Metal Resources, Inc.

s/Thomas W. Hargrove
One of Its Attorneys

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